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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,332	09/30/2003	Donald E. Weder	8403.998	5316
30589	7590	09/13/2004	EXAMINER	
DUNLAP, CODDING & ROGERS P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113			PALO, FRANCIS T	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/675,332

Applicant(s)

WEDER, DONALD E.

Examiner

Francis T. Palo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Terminal Disclaimer

The terminal disclaimer filed on 5/24/04 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of US Patent No. 6,662,498 has been reviewed and is accepted.

Allowable Subject Matter

The indicated allowability of claims 1-48 is withdrawn in view of the newly discovered reference(s) to WO 96/37133 (Charrin et al.).

Rejections based on the newly cited reference(s) follow.

Response to Amendment

The Examiner does not concur with the Applicant's assertion that the claims are in a condition for allowance, and wishes to explain:

The Applicant is advised that the claims (excluding dependent claims 12, 13, 38 and 39) are being construed as ***product-by-process*** claims ("A Decorative Assembly...**formed by a method comprising the steps of:**") as the claimed product appears to be the same or similar to that of the prior art (PCT Pub. No. WO 96/37133 [Charrin et al.]).

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Therefore, the Examiner contends that the aforementioned instant claims are product-by-process claims, and the product itself (Decorative assembly comprising a floral holding material, a sheet of material and a band) does not depend on the process of making it.

Consequently, as the product-by-process claims are not limited to the manipulations of the recited steps, rather only the structure implied by the steps; 35 U.S.C. 102/103 rejections are being made, and this Office Action will be a second non-final action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-48 are rejected under 35 U.S.C. 102(a) as anticipated by or,
in the alternative, under 35 U.S.C. 103(a) as obvious over
Charrin et al. (WO 96/37133) 1996.

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Regarding **independent claims 1, 16, 29 and 40:**

The instant independent product-by-process claims cite, "a decorative assembly for supporting a floral grouping having a stem portion and a bloom portion, the decorative assembly comprising a floral holding material, a sheet of material and a band, the decorative assembly formed by a method comprising the steps of:"

Charrin WO 96/37133 depicts and discloses in the Abstract;

a floral holding material (Figures 1 and 2; element-1),

a sheet of material (Figure-3; element-8),

and a band (Figures 2 and 4; element-21),

for supporting a floral grouping having a stem portion and bloom portion, as cited in the instant independent claims.

Charrin therefore discloses the structure of the instant claims, and as such the instant claims are being construed as product claims defined in terms of the method or process by which it is made; see MPEP 2113.

Regarding **repeating claims 2 and 17:**

The discussion above regarding the independent claims is relied upon.

Charrin depicts a band (21) positioned about a portion of the floral holding material sidewall, as cited in the instant claims.

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Regarding repeating claims 3, 7, 18, 22, 31 and 42:

The discussion above regarding the independent claims is relied upon.

Charrin depicts a substantially uncovered floral holding material open upper end, as cited.

Regarding repeating claims 4 and 19:

The discussion above regarding the independent claims is relied upon.

Charrin depicts a band (21) positioned about a portion of the floral holding material sidewall; Charrin does not depict the band positioned above the open upper end.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have positioned the band of Charrin as cited, as it has been held that rearranging parts of an invention involves only routine skill in the art.

Regarding repeating claims 5 and 20:

The discussion above regarding the independent claims is relied upon.

Charrin depicts in Figure-4 a band (21) positioned about a portion of the sheet of material disposed about a portion of the stem portion of the floral grouping, as cited.

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Regarding repeating claims 6, 21, 30 and 41:

The discussion above regarding the independent claims is relied upon.

Charrin depicts in Figure-4 a band (21) positioned about the peripheral sidewall, as cited.

Regarding repeating claims 8, 23, 32 and 43:

The discussion above regarding the independent claims is relied upon.

Charrin depicts a band (21) positioned about a portion of the floral holding material sidewall; Charrin does not depict the band positioned above the open upper end.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have positioned the band of Charrin as cited, as it has been held that rearranging parts of an invention involves only routine skill in the art.

Regarding repeating claims 9, 24, 33 and 44:

The discussion above regarding the independent claims is relied upon.

Charrin depicts in Figure-4 a band (21) positioned about a portion of the sheet of material disposed about a portion of the stem portion of the floral grouping, as cited.

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Regarding repeating claims 10, 25, 34, 36, 45 ad 47:

The discussion above regarding the independent claims is relied upon.

Charrin depicts the bloom portion of the floral grouping extending above the open upper end of the floral holding material, as cited.

Regarding repeating claims 11, 26, 35, 37, 46 and 48:

The discussion above regarding the independent claims is relied upon.

Charrin depicts the bloom portion of the floral grouping extending above the open upper end of the floral holding material, as cited.

Regarding repeating claims 12, 13, 38 and 39:

The discussion above regarding the independent claims is relied upon.

Charrin discloses fluid impermeable material in the Abstract, as cited.

Regarding repeating claims 14 and 27:

The discussion above regarding the independent claims is relied upon.

Charrin depicts and discloses a decorative assembly; said assembly of Charrin is capable of the formation as cited.

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Regarding repeating claims 15 and 28:

The discussion above regarding the independent claims is relied upon.

Charrin depicts and discloses a decorative assembly; said assembly of Charrin is capable of the formation as cited.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Francis T. Palo

Francis T. Palo
Examiner
Art Unit 3644